

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS NOS. 5693 of 1999 to 5708 of 1999
with
FIRST APPEALS NOS.5713 OF 1999 TO 5720 OF 1999
with
FIRST APPEALS NOS.5721 OF 1999 TO 5732 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DY.COLLECTOR

Versus

PRAGJIBHAI PUNABHAI

Appearance:

Mr.H.B.Punani, AGP, for the appellants
MR KL DAVE for Respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: ____/08/2000

C.A.V. Judgment: (per: Kadri, J.)

1. Appellants have filed this group of appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated March 20, 1999 passed by learned Joint District Judge, Junagadh, in Land Reference Cases Nos. 78/87 to 93/87, 11/88 to 14/88, 124/88 to 131/88 and 155/88 to 166/88. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Agricultural lands of villages Fatsar and Vadviyala, Taluka: Una, District: Junagadh, were placed under acquisition for public purpose of 'Machhundri Irrigation Scheme', by issuance of notifications under Section 4(1) of the Act, which were published in the Government Gazette on March 10, 1983, July 19, 1984 and September 27, 1984. After following the usual procedure under the Act, the Land Acquisition Officer, on the basis of materials placed before him, made his award on March 24, 1986, and offered compensation of acquired lands of both the villages at the rate of Rs.70/- per Are for jirayat land and Rs.100/- per Are for bagayat land. The claimants were of the opinion that compensation offered by the Land Acquisition Officer was inadequate and, therefore, they filed reference applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Junagadh, for determination of market value of acquired lands. Accordingly, the said applications were referred to the District Court, wherein, they came to be numbered as Land Reference Cases Nos. 78/87 to 93/87, 11/88 to 14/88, 124/88 to 131/88 and 155/88 to 166/88. Before the Reference Court, the claimants had claimed compensation of acquired lands of both the villages at the rate of Rs.1500/- per Are. The appellants contested the reference applications filed by the claimants.

3. On the basis of rival contentions raised by the parties, the Reference Court raised common issues at Exh.12. To substantiate their claim of enhanced compensation, claimant of Land Acquisition Case No.90 of 1987, Mansukhlal Parshottambhai, was examined at Exh.16; claimant of Land Acquisition Case No.128 of 1988, Laljibhai Haribhai, was examined at Exh.12; and claimant of Land Acquisition Case No.156 of 1988, Bhikhabhai Jerabhai was examined at Exh.15. On behalf of the

appellants, Deputy Mamlatdar, Bhupatlal Jamnadas Chaniyara was examined at Exh.58. The claimants deposed that their lands, which were placed under acquisition, were fertile and they were getting yearly income of Rs.30,000/- out of sale of agricultural produces raised on acquired lands. The claimants, during their deposition, produced previous award rendered in Land Reference Case No.205 of 1991 in respect of acquired lands of village Kodiya at Exh.18. Agricultural lands of village Kodiya were placed under acquisition by notification under section 4(1) of the Act issued on February 6, 1978, and the Reference Court had determined market value at the rate of Rs.650/- per Are for irrigated lands and Rs.495/- per Are for non-irrigated land. The Reference Court, for the purpose of determination of market value of present acquired lands of villages Fatsar and Vadviyala, placed reliance on previous award Exh.18 rendered in Land Acquisition Case No.205 of 1991, which was in respect of acquired lands of village Kodiya. As notification under Section 4 of the Act in respect of acquired lands of village Kodiya covered under previous award Exh.18 was issued in the year 1978, the Reference Court gave price rise of 10% per year and determined market value of present acquired lands at the rate of Rs.875/- per Are for irrigated lands and Rs.625/- per Are for non-irrigated lands. The Reference Court also extended statutory benefits under Sections 23(1-A) and 23(2) and interest as per the amended provision of Section 28 of the Act, which has given rise to filing of these three groups of appeals.

4. Learned Assistant Government Pleader, Mrs.H.B. Punani and learned advocate Mr. K.L. Dave have taken us through the entire record and proceedings of the Reference Court.

5. Learned Assistant Government Pleader for the appellants has vehemently submitted that village Fatsar and village Vadviyala were situated 6.50 kms and 8.75 kms respectively, away from village Kodiya and, therefore, the Reference Court had erred in placing reliance on previous award Exh.18 rendered in Land Acquisition Case No.205 of 1991. Learned counsel for the appellant has further submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of acquired lands of both the villages, Fatsar and Vadviyala. It is further stressed that no cogent evidence was led by the claimants to establish that they were entitled to

compensation at the rate of Rs.875/- per Are for irrigated lands at Rs.625/- per Are for non-irrigated lands and, therefore, the impugned award should be quashed and set aside, and the appeals be allowed.

6. Mr. K.L. Dave, learned counsel for the claimants, submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is comparable as well as relevant for the purpose of determining market value of the lands acquired from villages Fatsar and Vadviyala and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on the said award Exh.18 for the purpose of determining market value of the lands acquired in this case. What was asserted was that a just award has been passed by the Reference Court in determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed.

6. We have heard learned counsel for the parties at length. We have gone through the record and proceeding and taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

7. In our opinion, submission of learned Assistant Government Pleader for the appellants that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of acquired lands of both the villages, Fatsar and Vadviyala, does not deserve any merit. Previous award Exh.18 rendered in Land Acquisition Case No.205 of 1991 was confirmed by Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) by judgment and order dated July 27, 1999, wherein, market value of acquired lands of village Kodiya as on February 6, 1978, determined by the Reference Court at the rate of Rs.650/- per Are for irrigated land and Rs.495 per Are for non-irrigated land, was confirmed. Therefore, previous award Exh.18 rendered in Land Reference Case No.205 of 1991 had become final. The claimants had led sufficient evidence to establish that the lands of village Kodiya were in all respects relevant and comparable and having same fertility as compared to acquired lands of village Fatsar and Vadviyala. It was never brought to the notice of the Court that the lands

acquired in the present case have certain disadvantages in comparison to the agricultural lands of village Kodiya which were previously acquired. When comparable sale deeds of the same village or nearby villages were not available, which had taken place in near proximity of time of issuance of notification of present acquired lands, the Reference Court had not committed any error in placing reliance on previous award Exh.18 which had become final, when acquired lands of previous award were comparable with the present acquired lands. Section 4 notification of previous award Exh.18 was published on February 6, 1978, whereas Section 4 notifications of present acquired lands of village Fatsar were published on March 10, 1983 and September 27, 1984 and notification of present acquired lands of village Vadviyala was published on July 19, 1984. The claimants had established that lands of both villages were having same fertility and the agriculturists were raising similar crops every year. Even the crop pattern was also similar. The Reference Court was justified in giving price rise of 10% every year for the purpose of determination of market value of present acquired lands as on 1983 and 1984.

8. The main anxiety of the authority or Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S.23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose and policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired should get fair and just amount of compensation. The Reference Court had adopted a method for determining market value of present acquired lands on the basis of previous award Exh.18 in respect of acquired lands of village Kodiya. When no other reliable evidence was available, the approach of the Reference Court in adopting and accepting the method of placing reliance on previous award Exh.18 is quite just and correct in the facts and circumstances of the present case.

9. It may also be stated that the Division Bench of this Court (Coram: M.R. Calla & P.K. Sarkar, JJ.) by judgment and order dated December 24, 1999 rendered in First Appeals Nos.3217 of 1999 to 3232 of 1999, had determined market value of acquired lands of village Vadviyala as on February 25, 1987 at the rate of Rs.703/per Are for jirayat land and Rs.937/- per Are for bagayat land. It is well settled that previous award of

the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from another village. It was not brought to the notice of this Court that the previous award of the Reference Court was in any manner modified by the appellate court. In view of previous judgments of two Division Benches of this Court, determination of market value of acquired lands of villages Fatsar and Vadviyala at the rate of Rs.625/- per Are for jirayat land does not call for any interference and it is hereby confirmed. It is settled legal principle that price of bagayat land, which is superior in quality to jirayat land, would fetch 25% excess compensation over and above market value of jirayat land. If 25% is added to the price of jirayat land, which is determined at the rate of Rs.625/- per Are, the price of bagayat land would come to Rs.781/- per Are. Therefore, we modify the award of the Reference Court and determine market value of acquired bagayat lands of villages Fatsar and Vadviyala at the rate of Rs.781/- per Are, instead of Rs.875/- per Are as determined by the Reference Court. We, therefore, hold that market value of acquired bagayat lands of villages Fatsar and Vadviyala would be Rs.781/per Are. Statutory benefits extended in favour of the claimants by the Reference Court under Sections 23(1-A) and 23(2) are also eminently just and proper and does not call for any interference.

10. As a result of foregoing discussion, these First Appeals are partly allowed. Market value of acquired bagayat lands of villages Fatsar and Vadviyala is determined at the rate of Rs.781/- per Are as on 1983 and 1984. Determination of market value of jirayat lands of villages Fatsar and Vadviyala at the rate of Rs.625/per Are is confirmed. Statutory benefit extended under Section 23(1-A) and 23(2) and interest as per the amended provision of Section 28 of the Act is eminently just and proper and does not call for any interference. However, it is clarified that the claimants would not be entitled to interest on the amount of solatium as well as on the amount awarded under Section 23(1-A) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(M.H.Kadri, J.)

(D.P.Buch, J.)

(swamy)